

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3690 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mrs. VIDULA R. JOSHI

Versus

GUJARAT STATE FINANCIAL CORP.

Appearance:

MR AM RAVAL for Petitioner

MR RM VIN for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/07/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, an employee of Gujarat State Financial Corporation, filed this Special Civil Application before this Court challenging therein the orders, annexures 'B' & 'D'. Further prayer has been made by the petitioner to give her appointment on the post of Superintendent pursuant to her selection made in the year 1978 and prayed for deemed date of appointment and that the respondent be directed to appoint the petitioner to the post of Superintendent either on the basis of her

selection or on the basis of promotion and give her deemed date of appointment on the basis of date of appointment of Shri S.J. Parmar, who was just above the petitioner in the waiting list.

2. In the year 1977, applications were invited by the respondent - Gujarat State Financial Corporation, for making appointment on the post of Superintendent. In pursuance to the said advertisement, the petitioner and others made applications and a waiting list was prepared in which, undisputedly, the name of the petitioner was placed at Sr.No.12. The name of Shri S.J. Parmar has been placed, as per petitioner's own case, just above her in the aforesaid waiting list. It is also not in dispute that out of this waiting list which has been prepared in pursuance of the aforesaid advertisement, the candidates whose names were there from Sr.No.1 to 9 have been given appointments, but the candidates whose names stood from Sr.No.10 onwards were not given appointments. The petitioner and Shri S.J. Parmar have also not been given appointments. The reason which has been given by the Corporation under its letter dated 23rd June 1981 for not giving appointment to the petitioner is that the waiting list has lapsed. The respondent has taken decision that the waiting list prepared can have only life of one year and in pursuance of said decision, the waiting list has lapsed. This letter annexure 'B' has been challenged by the petitioner in this Special Civil Application. The next order under challenge, impugned to this Special Civil Application is annexure 'D'. Against the order dated 23rd June 1981, the petitioner filed an appeal and the said appeal has been dismissed under the order annexure 'D', by the Corporation on the ground that it is not maintainable.

3. The first grievance made by the petitioner challenging the validity of annexures 'B' and 'D' is not tenable. Waiting list has a life for a reasonable period and it cannot be kept alive for indefinite period. Waiting list can only be operated for the post which has been advertised and in response to which the said list has been prepared. In the advertisement dated 7th November 1977, the number of posts which were to be filled in have not been mentioned. Even if it is taken to be so, then also the waiting list could have been considered valid only for the vacancies which were available or anticipated, within a reasonable period. Vacancies which were created or made available after reasonable period of preparation of list could not have been filled in from the waiting list earlier prepared by appointing the candidates who have been enlisted in the

said waiting list. That course has been adopted by the Corporation and the course which sought to be adopted by the Corporation by the petitioner by filing this Special Civil Application is against the mandate as contained under Article 14 & 16 of the Constitution of India. The candidates who acquired eligibility for appointment on the post of Superintendent after reasonable period of expiry of currency of waiting list will deprive a right of consideration of appointment in the public employment, which is a fundamental right. The Corporation has taken a reasonable decision and the currency of waiting list has rightly been taken to be only for one year. The said decision of the Corporation does not call for any interference of this Court. None of the legal or fundamental rights of the petitioner are infringed by the said decision. It is a settled law that a candidate who has been empaneled does not acquire indefeasible right to be appointed. Merely because the vacancies are available and the number of candidates have been found fit by the Selection Committee, will not give them any right of appointment to the said post. The appointing authority can deny, legitimately, the appointment to the candidate who has been empaneled. In such cases, the appointing authority has to satisfy the Court that there was a legitimate ground for denial of the appointment to the concerned candidate.

4. A reference in this respect may have to be made to the following decisions of the Hon'ble Supreme Court:

- a) Shankaran Das v. Union of India, reported in 1991 (3) SCC 47.
- b) Jetendrakumar v. State of Punjab, reported in 1985(1) SCR 899.
- c) Sabitaprasad v. State of Bihar, reported in JT 1992 (Supp.) SC 135.
- d) Charulata v. S.J.Guhalan, reported in JT 1995(3) SC 557.
- e) State of Bihar v. Mohammad Kalauddin, reported in JT 1996(1) SC 271.
- f) Union of India v. S.S. Uppal, reported in JT 1996(1) SC 258.

And the decisions of this Court:

g) Rathod Jasabhai v. State of Gujarat, reported in 1995(1) GLR 927.

h) N.S. Misra v. Ahmedabad Municipal Corporation, reported in 1995(1) GLR 483.

i) Commissioner of Police v. Santosh Vasant Mali, reported in 1995(2) GLR 1640.

In the present case, the respondent has denied the appointment to the petitioner on legitimate ground.

5. It is not the case of the petitioner that any person who is below to her in the waiting list has been given appointment. The counsel for the petitioner has contended that it was a malafide action which has been done deliberately to deny appointment to the petitioner. But that contention is devoid of any substance. It is not a case where because of the decision of the Corporation, the petitioner alone has been deprived of the appointment. The other persons including Shri Parmar and other candidates whose names were there at Sr.No.10 onwards and the candidates below the petitioner, have also been deprived the appointment. In view of these facts, it cannot be said to be a case of pick and choose or a deliberate attempt on the part of the Corporation to deny appointment to the petitioner. Apart from this, it is an action of the Corporation and not of any individual officer.

6. The prayer of the petitioner to give her appointment on the post of Superintendent from the date on which Shri S.J. Parmar has been given appointment is also devoid of any substance. The respondent-Corporation, vide advertisement published in 'Sandesh' daily, on 15.9.81, invited applications for the post of Superintendent. This advertisement was confined to the reserved posts for Schedule Caste and Schedule Tribes. The petitioner has rightly not applied in response to the said advertisement. Another advertisement has been issued by the Corporation on 12.12.81 in 'Gujarat Samachar' daily inviting applications for the post of Superintendent. In response to the said advertisement, the petitioner applied for the post as it has been done by Shri Parmar. The grievance of the petitioner is that this time Science graduates were not considered to be eligible and as such she was not called for interview, which is illegal. Another grievance has been made that though Shri V.K. Parmar, who is B.Sc., has been given appointment. Here it is necessary to mention that in the writ petition at page-8, name of Shri Parmar has been

mentioned as Shri V.K. Parmar whereas in the prayer clause, name has been given as Shri S.J. Parmar.

7. In reply to this Special Civil Application, the respondent came up with the case that the staff selection committee has taken a decision that looking to the nature of work to be done by the Superintendent in the Corporation, qualifications should be laid down to fulfil the object. The qualifications for the post of Superintendent (Technical) was laid down as IIInd class degree in any discipline of Engineering or post graduate degree in Science with Chemistry as principal subject. In addition to that, three years' experience was also required. The qualification for the post of Superintendent (Finance) was prescribed as post graduate degree or first or higher second class degree in Commerce or Arts with Economics as principal subject. It has further been provided that degree in Law will be added qualification. In addition to these qualifications, experience was also required.

8. The petitioner has not challenged that decision of the staff selection committee. It is for the employer to decide that candidates of what qualifications should be appointed for the post of Superintendent (Technical) or Superintendent (Finance) looking to the nature of work to be discharged and the duties to be performed. In case the appointing authority decides to prescribe a particular qualification for a post, it cannot be said to be an arbitrary act or an act which violates Articles 14 and 16 of the Constitution of India. It is not necessary to go further on this question as the validity of the said decision of staff selection committee, as stated earlier, has not been challenged by the petitioner. The petitioner has put much emphasis on the fact that Shri Parmar who was also B.Sc., has been given appointment whereas the petitioner has not been called for interview. This fact has been denied. The petitioner has not produced any material on record to show that Shri Parmar was not possessing qualifications for the post of Superintendent (Finance) as laid down by the Corporation and as required under the notification in pursuance of which he has been appointed. The petitioner has come up with the case that in March 1982 some persons were appointed to the post of Superintendent who are B.Sc. and who were not Arts or Commerce graduates. One such person to the knowledge of the petitioner is Shri Parmar who is B.Sc. and he was appointed to the post of Superintendent in March 1982. In reply, the respondent has denied this fact. Leaving apart the question that the petitioner has not produced any material in support

of this plea, a question therefore emerges is whether in absence of challenge of appointment of Shri V.K. Parmar and in absence of Shri V.K. Parmar being impleaded as a party in this Special Civil Application, this Court can go on to adjudicate this question or not? The reply to this question is certainly in negative. The petitioner has neither challenged the appointment of Shri Parmar nor he has been impleaded as a party to this petition. In absence of challenge of appointment of Shri Parmar and behind the back of that person, it is not proper as well as advisable for this Court to go on to adjudicate this question. It is a case where none of the legal or fundamental rights of the petitioner have been infringed. The grievance made by petitioner in this Special Civil Application is devoid of any substance.

9. In the result, this Special Civil Application fails and the same is dismissed. The petitioner is directed to pay Rs.1,000/- by way of costs of this petition to the respondent. Rule is discharged.

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(sunil)